IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 30 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHBHAI @ BHURKHI HIRABHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 30 of 2003

MR YATIN SONI for Petitioner No. 1

MR I.M.PANDYA, APP for Respondent No. 1

RULE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 25/02/2004

ORAL JUDGEMENT

I have gone through the order under challenge in the present revision dated 13.11.2002 while dealing with

the application exhibit-6 and considered the submissions of learned APP Mr. I.M.Pandya appearing for the respondent State.

2. The accused of Sessions Case No. 190 of 1999 replied to the Court that he has not been supplied with the papers of investigation carried out by the investigating agency after the order passed under Section 173(8) of the Cr.P.C. and, therefore, the investigating agency should be directed to supply papers of further investigation carried out on account of the directions issued by the Court. Undisputedly, report was submitted by the investigating agency on completion of the further investigation. It reveals that after filing of the charge sheet, an application under Section 173(8) of Cr.P.C. was given on behalf of the prosecution, praying reinvestigation of the crime and, simultaneously, the mother of one of the accused had represented before the Government of Gujarat that a detailed proper investigation has not been done and wrong persons are booked as accused and, therefore, the State had taken decision for reinvestigation.

3. It is, as per settled legal position, any investigation carried out by the agency after report under Section 173(2) Cr.P.C. can be termed as further investigation and not a reinvestigation or denovo investigation. The application exhibit-6 was given on behalf of accused with the papers of the investigation carried out by the agency as desired by the State Government, should be given to the accused side. For the sake of convenience and brevity, I would like to quote the facts placed before the learned Sessions Judge, which are reflected in relevant para 6 & 7 of the decision;

> "When on the further investigation or reinvestigation the statement of the witnesses recorded in the earlier investigation are found to be correct and no new witness is found then in that case on demand of defence to supply the copies or papers of further investigation cannot be accepted. During the investigation the Investigation Officer might have recorded statements of many persons and might have collected some papers or documents and might have entered into some correspondence but only the statements of the witnesses and papers or documents collected which are material and necessary for the trial against the accused, are being produced along with the charge sheet, i.e. report under Section 173 of Cr.P.C. Only the

statements of persons were shown as witnesses in the charge sheet are to be supplied to the defence along with the report under Section 173 of the Cr.P.C. Similarly, the documents or the other papers on which the prosecution relies are required to be supplied to the defence along with the report under Section 173 of Cr.P.C. Therefore, when the prosecution says that after the reinvestigation no other witness is found then the earlier cited witness and the statements of the witnesses recorded are found to be correct then in that case question does not arise to supply the copies of papers of further investigation to the defence. Further in this case statement of one witness Minaben is recorded in further investigation and on which the prosecution relies. The copy of same is supplied to the defence. Therefore, nothing remained to be done so far as demand or supply of copies of further investigation is concerned.

Shri A.K.Malek and Vaisnav, L.A. for the accused have also submitted the report of the Investigation Officer dated 16.11.1999 is not in accordance with the S.173 of the Cr.P.C. Section 173(2) deals with what should be included in the police report submitted to the Magistrate after the investigation. A form is prescribed for the said report as per the provisions of said Sub Section 2 of Section 173 of Cr.P.C. It seems that the L.A. for the accused have a grievance that the report dated 16.11.1999 given by the Dy.S.P., C.I.C. Crime after further investigation, is not in the prescribed form under S.173(2) of Cr.P.C. So far as this grievance is concerned in the present application given on behalf of the accused there is no specific prayer that the report of further investigation is not in accordance with S.173(2) of Cr.P.C. and that the Investigating Officer be asked to submit the report in the said prescribed form. In the application the accused has only prayed for copies of papers of further investigation."

4. It is apparent from the record and the order under challenge that prosecution does not want to rely on any statements other than supplied to the accused with charge sheet/report submitted by the investigating agency at the end of the investigation carried out earlier and there is a positive statement that no new witness even

was found out or traced by the investigating agency. So, there was no scope to record evidence of such witnesses during the course of further investigation. The learned Judge has rightly held that what is material and important is that, what new thing is found in the further investigation. When there is no other or further material available with the investigating agency which can throw light on the entire case, obviously, there is no question to supply such material or documents to the accused. It is not the say of the prosecution that they have received certain material during further investigation but the same are not found relevant for the purpose of trial, otherwise, the Court could have scrutinised this new/fresh material while dealing with application exhibit-6. It would not be proper for the Court to ask to submit a fresh charge sheet merely because State Government directed the agency to enter into the matter and to make further investigation before actual trial takes place. For short, there is no apparent illegality or judicial error committed by the learned Sessions Judge in passing the order under challenge. However, it is clarified that, if the accused is of the view that some statements were recorded during the course of further investigation by the investigating agency and those statements are lying in the record papers of investigation, the accused, obviously, can call that witness and examine him, if, he intends to enter into defence. The revision application is dismissed. Rule is discharged.

(C.K.Buch,J)

Jayanti*